

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TOKO KAIUN KABUSHIKI KAISHA)
(Fritz Maritime Agencies, Inc.))
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 219

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged violation of respondent's smoke emission regulations, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in a hearing at the Seattle offices of respondent at 10:45 a.m., February 22, 1973.

Appellant was represented by Michael G. Teltoft, Northwest Marine Representative of Fritz Maritime Agencies, Inc., agent for appellant. Respondent appeared through its counsel, Keith D. McGoffin.

1 No court reporter being present due to an error in scheduling,
2 Mr. McGoffin moved to have the status of the hearing changed from formal
3 to informal. The motion was granted.

4 Witnesses were sworn and testified. Exhibits were offered and
5 admitted. Closing arguments were made.

6 On the basis of testimony and arguments heard and exhibits examined,
7 the Pollution Control Hearings Board prepared Proposed Findings of Fact,
8 Conclusions and Order which were submitted to the appellant and
9 respondent on March 16, 1973. No objections or exceptions to the
10 Proposed Findings, Conclusions and Order having been received, the
11 Pollution Control Hearings Board makes and enters the following:

12 FINDINGS OF FACT

13 I.

14 The TOKO MARU, a steel and log-carrying ship owned by appellant and
15 launched in Japan about a month prior to the instant matter, arrived at
16 Everett, Snohomish County, on its maiden voyage late the night of
17 September 24, 1972. Being a new vessel, its engines and other equipment
18 were subject to usual "shakedown cruise" adjustments.

19 II.

20 Shortly after 1:00 p.m., September 25, 1972, and while the vessel
21 was secured to an Everett pier, black smoke was emitted from the TOKO
22 MARU's stack for at least ten minutes of a shade darker than No. 2 on the
23 Ringelmann chart. Neither the captain nor the chief engineer were
24 aboard at the time. The emission continued for at least another
25 twenty minutes.

26
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 III.

2 In connection with this emission observed by an inspector on
3 respondent's staff, respondent issued Notice of Violation No. 5969,
4 citing Section 9.03(a) of respondent's Regulation I, against the ship
5 and subsequently served Notice of Civil Penalty No. 472 on appellant in
6 the maximum allowable amount of \$250.00. That penalty is the subject
7 of this appeal.

8 IV.

9 Section 9.03(a) of respondent's Regulation I makes it unlawful to
10 cause or allow the emission of an air contaminant darker in shade than
11 No. 2 on the Ringelmann chart for more than three minutes in any hour.

12 V.

13 After becoming aware of Notice of Violation No. 5969, the TOKO MARU's
14 master ordered an inspection of the engine system which resulted in
15 replacement of parts worn by maladjustment and a realignment of the
16 firing system. On September 29, 1972, the master responded to a
17 directive printed on the face of the Notice of Violation and mailed a
18 written statement to respondent informing the Agency of measures which
19 had been taken to prevent a recurrence of the emissions. The TOKO MARU
20 remained in Everett until September 29, 1972 without receiving further
21 Notice of Violations from respondent.

22 From these Findings, the Pollution Control Hearings Board comes
23 to these

24 CONCLUSIONS

25 I.

26 The TOKO MARU was in violation of Section 9.03(a) of respondent's
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 Regulation I on September 25, 1972.

2 II.

3 Whether the civil penalty in the maximum allowable amount of \$250.00
4 is reasonable is the only debatable issue here. On the one hand, it
5 certainly is obvious that respondent, in view of the heavy maritime
6 traffic in Puget Sound, cannot adopt a policy of "one free bite" in
7 enforcing its stack emission regulations. On the other hand, there is
8 some evidence in this case that appellant is a firm which makes a
9 conscientious effort to comply with local pollution control regulations.
10 There is no showing that the TOKO's master ignored the Notice of
11 Violation; to the contrary, he took prompt steps to learn why the
12 violation occurred, ordered corrective measures and promptly informed
13 respondent of what he had done.

14 THEREFORE, the Pollution Control Hearings Board issues this

15 ORDER

16 The appeal is denied in part. Appellant is directed to pay to
17 respondent \$125.00, the balance of \$125.00 is suspended pending no
18 similar violations by the TOKO MARU for one year from the date of this
19 Order.

20 DONE at Olympia, Washington this 24th day of April, 1973.

21 POLLUTION CONTROL HEARINGS BOARD

22 Walt Woodward
23 WALT WOODWARD, Chairman

24 W. A. Gissberg
25 W. A. GISSBERG, Member

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James T. Sheehy
JAMES T. SHEEHY, Member